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IN THE
COURT OF APPEALS OF INDIANA

LEE MADISON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0602-CR-80
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Israel N. Cruz, Master Commissioner
Cause No. 49F10-0510-CM-7061

September 1, 2006

MEMORANDUM OPINION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Lee Madison appeals his conviction for Operating a Vehicle While Intoxicated,[1] a class A misdemeanor. Specifically, Madison contends that his conviction must be reversed because the State failed to establish beyond a reasonable doubt that he was the operator of the vehicle or that he operated the vehicle while intoxicated. Concluding that the evidence was sufficient, we affirm the judgment of the trial court.

FACTS

On January 15, 2005, Madison was driving westbound on 71st Street in Indianapolis when he lost control of his vehicle. The vehicle came to a stop on top of a guardrail. Marion County Sheriff's Deputy Clinton Ellison arrived at the scene and found no one in the vehicle. As Deputy Ellison assessed the scene, another vehicle approached from a neighboring residence with Madison in the front-passenger seat. Madison informed Deputy Ellison that he had been the driver of the vehicle involved in the accident ten minutes earlier. During their conversation, Deputy Ellison observed that Madison had bloodshot eyes, poor balance, slurred speech, and smelled of alcohol. Deputy Ellison contacted control dispatch to send an officer from the Driving While Intoxicated (DWI) Task Force, and Marion County Sheriff's Deputy John Howard arrived at the scene shortly thereafter. Deputy Howard also noticed that Madison had bloodshot eyes, unsteady balance, slurred speech, and smelled of alcohol. Madison also informed Deputy Howard that he had been operating the vehicle when he lost control and landed on the guardrail.

Madison agreed to submit to field sobriety tests, but Deputy Howard was unable to

[1] Ind. Code § 9-30-5-2.

perform a horizontal gaze nystagmus test (HGN) or a balance test because Madison informed the deputy that he had glaucoma and had recently undergone hip surgery. Deputy Howard administered the backward count and finger count tests, but Madison failed both tests. Madison refused to submit to a chemical test and was arrested. Deputy Howard obtained a search warrant to draw Madison's blood, and the blood test revealed that Madison's blood alcohol content was 0.23 grams per 100 milliliters.

As a result of this incident, Madison was charged with Count I, class A misdemeanor operating a vehicle while intoxicated, and Count II, class A misdemeanor operating a vehicle at or above a blood alcohol level of 0.15. A bench trial was held on January 18, 2006, and Madison was convicted on both counts. However, the trial court merged Count II into Count I and suspended Madison's 363-day sentence. He now appeals.

DISCUSSION AND DECISION

In addressing Madison's challenge to the sufficiency of the evidence we only consider the probative evidence and reasonable inferences that support the judgment below. O'Connell v. State, 742 N.E.2d 943, 949 (Ind. 2001). We do not reweigh the evidence or assess witness credibility, rather, we affirm the conviction if there is probative evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id. A conviction may be sustained wholly on circumstantial evidence if such evidence supports a reasonable inference of guilt. Maul v. State, 731 N.E.2d 438, 439 (Ind. 2000). While presence at a crime scene cannot alone sustain a conviction, such presence combined with other facts and circumstances can raise a reasonable inference of guilt. Id.

To convict Madison of driving while intoxicated, the State was required to prove beyond a reasonable doubt that Madison operated a motor vehicle in a manner that endangered another person. I.C. § 9-30-5-2. Here, Madison does not challenge that he was the owner of the vehicle in the accident. Rather, Madison asserts that the State did not prove beyond a reasonable doubt that he was operating the vehicle at the time of the accident or that he operated the vehicle while intoxicated.

At the outset, we note that this court previously addressed a similar argument in Brunes v. State. 475 N.E.2d 356 (Ind. Ct. App. 1985). In Brunes, police officers arrived at the scene of an accident to find a vehicle in a ditch and numerous people gathered around the accident scene. When police arrived there was no driver behind the wheel of the vehicle, and the vehicle engine and lights were turned off. An obviously intoxicated person, later identified as Brunes, admitted to the police that he had been driving the vehicle. Id. at 357. Brunes was convicted of driving while intoxicated and argued on appeal that the evidence was insufficient to show "that he drove the automobile and that he was intoxicated at the time he drove it." Id. at 358. Rejecting Brunes's argument, we determined that the evidence was sufficient to support his conviction and affirmed the decision of the trial court. Id.

In this case, Madison admitted to both Deputy Ellison and Deputy Howard that he had been operating the vehicle when the accident occurred. Tr. p. 8, 11-12. He voluntarily told both deputies that he was traveling westbound on 71st Street when he lost control of the vehicle. Id. Such admissions alone are sufficient to show that Madison was the driver of the vehicle when the accident occurred. See Brunes, 475 N.E.2d at 358-59. Notwithstanding

such admissions, the evidence further established that Madison was the undisputed owner of the vehicle and was found near the accident scene "just at the same time" Deputy Ellison arrived. Appellant's Br. p. 4; Tr. 7; see also Groves v. State, 479 N.E.2d 626, 628 (Ind. Ct. App. 1985) (finding evidence establishing defendant's ownership of vehicle and presence at accident scene sufficient to conclude that defendant was driving the vehicle at the time of the accident). Therefore, we conclude that the evidence in this case sufficiently established that Madison was driving the vehicle at the time of the accident.

As for Madison's argument that the State failed to prove his intoxication, both Deputy Ellison and Deputy Howard observed Madison's actions at the scene of the accident and independently concluded that he was intoxicated. Tr. 9, 12-13. Additionally, Madison told Deputy Howard that he had been drinking earlier in the evening. Tr. 32. A blood test conducted two hours and twenty minutes after Deputy Howard first observed Madison, well within the three-hour time frame required by Ind. Code § 9-30-6-2, found Madison's blood alcohol content to be 0.23. Ex. 2 at 7; Appellant's App. p. 14. Madison told Deputy Howard that he consumed no alcohol between the time of the accident and the blood screen test. Tr. 15, 19. This evidence is sufficient to show that Madison was intoxicated when he operated the vehicle.

While Madison points us to two cases he says support his claim, we find those cases easily distinguishable. In Robinson v. State, the defendant successfully appealed his conviction for driving while intoxicated because no one saw him drink alcohol before the accident, he was not at or near the accident scene when the police arrived, and he was

eventually found two to four miles from the accident scene hours later. 835 N.E.2d 518, 524-25 (Ind. Ct. App. 2005). Here, Madison admitted to police and at trial that he drank alcohol before the accident occurred. Tr. 31-32. Deputy Ellison testified that he saw Madison nearby in the passenger seat of another vehicle "just at the same time I arrived [at the accident scene]." Tr. 7. Madison indicated to Deputy Ellison that he was coming back to the vehicle because he had been driving at the time of the accident. Tr. 7. In light of these circumstances, Robinson is inapplicable.

Madison also points to Flanagan v. State to attack the temporal element of the driving while intoxicated charge. 832 N.E.2d 1139 (Ind. Ct. App. 2005). In Flanagan, the defendant's vehicle broke down, and police later found him and a friend walking on the side of the road intoxicated. Upon further inspection, empty beer cans were found in the backseat of the vehicle. The defendant was successful on appeal because the evidence at trial did not establish when defendant consumed the alcohol or that he had operated the vehicle while intoxicated. We found that, "it could be that Flanagan consumed beer after the vehicle broke down, and when the beers were all gone, the men decided to venture to a nearby store to call for assistance." Id. at 1141. Again, Madison admitted that he consumed alcohol before the accident and told Deputy Howard that he did not consume any alcohol between the time of the accident and the time Deputy Ellison found him. Tr. 15, 31-32. Therefore, Flanagan is inapplicable to these facts because the evidence at trial sufficiently established that Madison consumed alcohol before the accident occurred. Thus, the evidence was sufficient to support Madison's conviction for operating a vehicle while intoxicated.

The judgment of the trial court is affirmed.

VAIDIK, J., and CRONE, J., concur.